

## **CITIZEN ADVISORY COMMITTEE RETREAT ISSUE C - PERIODIC RULE EVALUATIONS**

**What should the frequency and content of the rule evaluation reports to the Natural Resources Board be?**

### **ALTERNATIVES:**

1. Instead of having two reviews of the rule at certain dates, have reviews occur immediately after proposal of MACT standard or passage of federal legislation on mercury. Subsequent reviews no more than 18 months after the last review.
2. Develop 2-phased rule package that sets phase I rules, but sets conditional phase II rules contingent on the federal utility MACT standard or federal law. Department to evaluate phase II rules once MACT standard is finalized and report back to the Natural Resources Board. Process to include an advisory committee and public comment period.
3. Stay with the evaluation in the proposed rules.
4. Department will provide Natural Resources Board with a status report upon proposal of federal mercury MACT standards with opportunity for public input. Department shall also prepare a review upon promulgation of federal MACT or federal legislation in order to reconcile state and federal requirements. However, status reports should be prepared a minimum of every 2 years notwithstanding this commitment.

### **COMMITTEE DISCUSSION:**

Strong support expressed by committee members for Alternative 4. It is recognized that federal rules can change from proposal to promulgation, which favors making specific recommendations to the Natural Resources Board, after federal rules are promulgated.

### **PROVISIONS IN THE PROPOSED RULES:**

**NR 446.13 Rule evaluation reports.** Requires the Department to report to the Natural Resources Board at least every 18-months with an evaluation of the feasibility of achieving the reduction requirements in NR 446.06 that considers scientific and technology developments. This report may contain recommendations for rule revisions or other actions.

### **ADDITIONAL BACKGROUND:**

The Natural Resources Board requested that the proposed rules have provision for a report to the Board by the end of 2007 that:

- a. Evaluates the mercury reduction requirements in light of electric reliability, scientific and technology developments, and federal regulatory activity, and recommends adjustments to the reduction requirements, if appropriate, and
- b. Assesses the impacts of emissions trading on localized water quality and recommends corrective actions if needed.

At the Natural Resources Board meeting in June 2001 revisions were made to the proposed rules that require a report to the Board on an 18-month basis.

## **SUMMARY OF PUBLIC COMMENT:**

*Wisconsin Utilities Association* – The Department has highlighted the fact that they must report to the DNR Board every 18 months to both examine the feasibility of achieving reductions and assess how well the rule aligns with science and technology developments and other regulatory activity. They justify the extensive rule package based on these mid-course reviews, and apparently, potential rule changes. We instead strongly recommend that the Department set out a reasonable rule package to begin with.

*Alliant Energy* – This section is vague, lacking details on the procedures and criteria for compelling technical evaluations. This section also fails to address monitoring of mercury deposition to assess resultant rule impacts on Wisconsin fish advisory levels.

*Wisconsin's Environmental Decade* – While many utilities have argued that this rule will harm electric reliability the rule evaluates impact at each of the reduction phases.

*Wisconsin Electric* - DNR's proposal to evaluate the impact of federal MACT standards on state requirements and make necessary adjustments does not adequately address the need to reconcile state rules with federal standards. A more definitive approach is to move forward with implementing a reasonable first rule phase, then condition the second phase of the rule on the outcome of the federal MACT standard. This would include an abeyance of the second phase of the state rule if it were inconsistent or more stringent than the federal program. The Department would then report back to the Natural Resources Board following a public comment period, and potential recommendations from a reconvened TAG.

## **COMMITTEE MEMBER INTERESTS:**

*Wayne Stroessner – Random Lake*

Since the Natural Resources Board requested that the proposed rules require a report on an 18-month basis, it would seem reasonable that they be granted that request. Included in this evaluation should be an analysis of the amount of mercury contamination in fish to determine whether the mercury levels are changing. i.e. randomly select twelve lakes; continue to test fish in these same twelve lakes every 18 months; compare the mercury levels over a twenty-year period. This will provide the Natural Resources Board to make decisions concerning the effectiveness of the program.

*Mark Yeager - ECCOLA*

Although an 18-month evaluation is reasonable, the Department may want to consider an annual review to assess lake response to reduced Hg emissions. In light of Carl Wattras' report on Little Rock Lake. Fund more & similar projects for a more accurate evaluation.

Filename: Issue C Final.doc  
Directory: Y:\org\aw\air\reg\mercury\CACreport  
Template: C:\Program Files\Microsoft Office\Templates\Normal.dot  
Title: ISSUE NO  
Subject:  
Author: Jon Heinrich  
Keywords:  
Comments:  
Creation Date: 06/24/02 3:45 PM  
Change Number: 4  
Last Saved On: 08/06/02 9:00 AM  
Last Saved By: Jon Heinrich  
Total Editing Time: 2 Minutes  
Last Printed On: 09/20/02 3:55 PM  
As of Last Complete Printing  
Number of Pages: 2  
Number of Words: 747 (approx.)  
Number of Characters: 4,259 (approx.)